

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 03-12551-MBB

FRANK SACO,
Plaintiff,
VS.

TUG TUCANA and
TUG TUCANA CORPORATION,
Defendants.

DEFENDANT, TUG TUCANA CORPORATION'S, ASSENTED TO MOTION
FOR EXTENSION OF TIME TO FILE ITS OPPOSITION TO PLAINTIFF'S
MOTION TO INCREASE MAINTENANCE AND CURE AND REQUEST FOR
EXPEDITED HEARING BY THE COURT

Now comes the defendant, Tug Tucana Corporation, in the
above-entitled action, by and through its undersigned
counsel, and hereby files its Assented to Motion for
Extension of Time to file its Opposition to plaintiff's
Motion to Increase Maintenance and Cure and Request for
Expedited Hearing by the Court.

As grounds in support of its motion, the defendant
submits the following.

BACKGROUND

1. On August 17, 2006, the plaintiff filed a Motion
to Increase Maintenance and Cure and Request for
Expedited Hearing by the Court.

2. Within the plaintiff's Motion, plaintiff's counsel submits that "there was no service contract or collective bargaining agreement to set or otherwise restrict the amount [of maintenance] to be paid." *See page 3 of plaintiff's Motion.*
3. In reviewing defendant's Response to plaintiff's Request for Production of Documents, defense counsel reviewed a document entitled "Contribution and Check-Off Report" that indicates that the defendant entered into a Collective Bargaining Agreement with the International Union of Operating Engineers Local # 25 Marine Division. Typically, a Collective Bargaining Agreement establishes the daily rate of Maintenance due to union members.
4. The Contribution and Check-Off Report, dated April 2003, lists the defendant's principal as the Employer, which "acknowledges his or its agreement to the Collective Bargaining Agreement...." A copy of a Contribution and Check-Off Report is enclosed herewith as **Exhibit 1.**¹
5. Upon discovering this information, defense counsel contacted plaintiff's counsel notifying them that

¹ The defendant redacted information from the document that did not pertain to the plaintiff's wages and the number of hours he worked.

the Collective Bargaining Agreement may set the daily rate for members' benefits and it may apply to the issues before this Honorable Court.

Therefore, defense counsel requested a two-week extension to file its Opposition to plaintiff's pending motion. A two-week extension should be sufficient time for defense counsel to obtain a copy of the Collective Bargaining Agreement and review its provisions concerning Maintenance and Cure benefits.

6. Plaintiff's counsel, Attorney Brian Keane, assented to the defendant's request for a two-week extension to file its Opposition on or before September 14, 2006.
7. Defense counsel submits that no prejudice will result to the plaintiff's case since the existence and applicability of a Collective Bargaining Agreement to the plaintiff's Maintenance and Cure claim before this Honorable Court may have a determinative effect on the outcome of this matter.

WHEREFORE, the defendant prays that this Honorable Court, for the reasons stated herein, grant its Motion for Extension of Time to file its Opposition to

plaintiff's Motion to Increase Maintenance and Cure and
Request for Expedited Hearing.

Respectfully Submitted,
DEFENDANT
CLINTON & MUZYKA, P.C.,

"/s/ Terence G. Kenneally"
Thomas J. Muzyka
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Terence G. Kenneally
BBO NO. 642124
One Washington Mall
Suite 1400
Boston, MA 02108
617-723-9165

Assented to,
PLAINTIFF
By his Attorney

"/s/ Brian Keane"
Brian Keane
BBO NO: 656717

Dated: August 29, 2006

LOCAL RULE 7.1(A)(2) CERTIFICATE

Boston, MA

August 29, 2006

I, Terence G. Kenneally, on August 29, 2006 hereby certify that I telephoned plaintiff counsel's office regarding this Motion and Attorney Keane assented to its filing. Therefore, I emailed a copy of this motion to Attorney Keane, obtained his assent to its content and filed this motion with this Honorable Court.

"/s/Terence G. Kenneally"